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Towards Regulating App Stores

A survey of the mobile
apps ecosystem &
regulatory developments
worldwide

ADiF



About Us

The Alliance of Digital India Foundation (ADIF) is an industry body committed to representing the voice of India's digital startups and driving collaboration across the startup ecosystem to make our country the best startup nation globally. ADIF aims to be a focal point of the Indian startup ecosystem and a representative of its voice.

We currently have 500 alliance members, including prominent organisations such as Paytm, Matrimony.com, Sheroes, Koo, Unacademy, MapMyIndia, ShareChat etc.



**Sijo Kuruvilla
George**
Executive Director



ADIF has been working on several key issues since its inception in 2020:

- Antitrust [Preventing abuse of dominance]
- Ease of doing startups [Founder friendly]
- Sanction proofing India's digital economy [Atmanirbharta]
- Progressive legislation [Proactive]
- Free and fair Internet [The health of digital markets]

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About TQH

The Quantum Hub (TQH) is a leading public policy consulting firm that was set up with the express intent of working on challenging public policy problems in the Indian context. TQH works along the entire cycle of policy formulation—from developing well-researched positions to building impactful communications strategies.

EXECUTIVE SUMMARY

Mobile devices such as smartphones and tablets are an indispensable part of modern life. They enable internet connectivity and provide a range of products and services such as instant communication, access to music, news and gaming through mobile software applications or “Apps”. Much like computers, all mobile devices run using an operating system. iOS and Android (run by Apple and Google respectively) are the major mobile operating systems, having a combined worldwide market share of 99.28% (as of April 2022).¹ In India, Android dominates the market with its market share being 95.1%, while iOS has 3.93%.²

Users usually download apps from digital marketplaces known as **app stores**. All smartphones come with at least one native app store pre-installed on the phone - on iOS, it is the *App Store* and on Android, it is *Google Play*³. By virtue of the large market shares of their underlying OS, *App Store* and *Google Play* have today become the dominant stores through which developers distribute apps to mobile users.⁴ Though some other app stores such as the Amazon App Store, Indus App Bazaar, Microsoft Store, F-Droid etc. exist, and one can sometimes also download apps via websites, the volume of downloads through these channels pales in comparison with the downloads through the *App Store* and *Google Play*. As a result, these stores are often termed “gatekeepers”⁵ of the app ecosystem.

App stores provide a wide variety of services to both users and developers. They do this by helping developers connect with users, and by subjecting all apps to checks before they can be published in the stores. These checks help reduce inappropriate and illegal content. As a result, users can easily find and securely purchase, download and update their apps. Developers gain too - app stores give them access to a large market, support app development, and provide various types of feedback through reviews, etc.

App stores charge a fee to cover the costs of providing these services and for facilitating transactions between developers and users.⁶ While many developers only pay a nominal listing fee to publish their app, the developers who sell digital goods and services are required to pay a set rate of commission on the purchase of paid apps, subscription services and purchases made within the app - known as “in-app purchases” (“IAPs”). The commissions charged vary depending on the type of app and sometimes, according to the jurisdiction where it operates. The Apple *App Store* charges either 15 or 30% commission on purchase of paid apps and IAPs, depending on the type of app. Similarly, *Google Play* charges either 15 or 30%, but this was not strictly enforced until recently. Other stores like the Microsoft Store charge 12% for games and 15% for other apps and the Epic Games Store charges 12%.⁸

That being said, the major focus of this issue brief will be on Apple and Google and their policies regarding IAP. Given their size, extensive market share, and user base, Google and Apple’s policies affect a wider swathe of users and developers, and changes to their policies can alter market dynamics for many participants. One policy that has received a lot of attention (and criticism) in the recent past has been Google’s decision to enforce a high commission on IAPs and paid apps by mandating the use of its proprietary payments system. Under this policy, developers will be effectively barred from using any other system to accept payments from customers. Several Indian developers have objected to this move and criticized the quantum of commissions as well as the lack of choice in picking a payments system, terming the proposed policy change unreasonable.⁹ Google’s new rules - which are already in

¹ Mobile Operating System Market Share Worldwide, Last accessed on 07/05/2022: <https://gs.statcounter.com/os-market-share/mobile/worldwide>

² Mobile Operating System Market Share India, Last accessed on 07/05/2022: <https://gs.statcounter.com/os-market-share/mobile/india>

³ Also sometimes marketed as Google Play Store.

⁴ Mobile Ecosystems: Market Study Interim Report, UK Competition & Markets Authority, 14/12/2021, (UK CMA Interim Report) <https://www.gov.uk/government/publications/mobile-ecosystems-market-study-interim-report/interim-report>

⁵ Digital Markets Act: ending unfair practices of big online platforms, European Parliament, <https://www.europarl.europa.eu/news/en/press-room/20211118IPR17636/digital-markets-act-ending-unfair-practices-of-big-online-platforms>

⁶ A Guide to Platform Fees, Ian Carlos Campbell and Julia Alexander, The Verge, 24/08/2021,

<https://www.theverge.com/21445923/platform-fees-apps-games-business-marketplace-apple-google>

⁷ In-app purchases refer to the buying of goods and services from inside an application on the user’s device.

⁸ See note 6.

⁹ Indian startups explore alliance and alternative app store to fight Google’s ‘monopoly’, Manish Singh, TechCrunch, 01/10/2020, <https://tcrn.ch/36pLj35>

force in some parts of the world and scheduled to come into force in India in late 2022 - could significantly dent developers' profit margins, affecting both business viability and innovation.

While commissions are important for the operation of the stores themselves, it is **difficult to determine the fair rates of commission. In the absence of competition, what is fair is not a straightforward question to answer, especially given the information asymmetry that plagues the relationship between developers and app store operators.** The problem is further compounded by the bundling of services - both the dominant app stores offer a multitude of services beyond any standard payment gateway available in the market. Because services are bundled, it becomes difficult to determine the *fair* fee for each service. The size and ubiquity of the dominant app stores, which benefit immensely from being pre-installed on their own operating systems, makes it almost impossible to ascertain a reasonable quantum or threshold for commissions.

Taking cognizance of these issues, several regulators around the world have expressed concerns with the policies of the dominant app stores. Apple is currently under investigation from regulators in the USA, Europe, Japan, Australia and India, while Google is also facing proceedings in the USA, Europe and India, among other countries. In India, cases were filed against Google and Apple with the Competition Commission of India (CCI) which is currently investigating them for abuse of market power in the country. In December 2021, the Netherlands competition regulator (ACM) found Apple's *App Store* in violation of its competition laws. It has since levied a series of (weekly) penalties against Apple for what it asserts is continued non-compliance with its order. By the 28th of March 2022 these fines had totaled €50 million with the regulator threatening another round of fines "with possible higher penalties".¹⁰ On the 28th of March 2022, France also joined the fray with the Paris Commercial Court levying a fine of €2 million on Google and asking it to rewrite clauses in its developer agreements that were deemed unbalanced within three months. The court said that Google could not provide it with any real justification for the commission charged.¹¹

But even as competition regulators are assessing the potential abuse of market power, several commentators have noted the limitations of this approach and called upon policymakers to rethink regulation of digital markets like apps stores.¹² Competition cases such as the ones currently under investigation require in-depth technical research that usually results in lengthy proceedings leading to delayed regulatory action. This can lead to aggrieved parties facing irrevocable harm in fast-moving digital markets where speed of innovation and quick uptake of products is critical for success. A case in point is France where the competition authority had started legal proceedings in 2018 to examine the contract clauses introduced by Google in 2015 and 2016. Some of these disputed contract clauses had already been changed while the proceedings were underway.¹³

Therefore, **to minimize damage and ensure competition in digital markets, some governments have considered the enactment of *ex ante* regulation that can guide the behaviour of market actors** by prescribing practices such as unbundling, to help prevent negative outcomes before they occur.¹⁴ In August 2021, South Korea passed a law barring app stores from forcing developers to use the app stores' proprietary billing system, becoming the first major legislation worldwide to impact app store policies.¹⁵

¹⁰ Apple's \$55 million fine over in-app payments for Dutch dating apps could start growing faster., Emma Roth, The Verge, 28/03/2022, <https://www.theverge.com/2022/3/28/22999998/apple-bigger-fine-proposal-dutch-regulator-acm-netherlands-dating-apps>

¹¹ Google ordered to modify the clauses of its Play Store by the French justice, Sébastien Dumoulin, Les Echos, 29/03/2022, <https://www.lesechos.fr/tech-medias/hightech/concurrence-google-sanctionne-pour-avoir-impose-ses-conditions-aux-developpeurs-dapplications-1396878>

¹² Amanat Khullar, Panel on 'Regulating App Stores in India' by ADIF & CAF, 25/02/2022, blog.adif.in/p/adif-caf-app-store-regulation-panel

¹³ See note 11.

¹⁴ Ex ante regulations aim to prevent market failures or distortions from occurring by identifying problems beforehand, and shaping stakeholder behaviour by telling businesses how to behave and what to do. In comparison, under ex-post regulations, consumers and producers are allowed to act according to what they believe maximizes welfare and regulators intervene only when a market failure or distortion has occurred.

¹⁵ S. Korea passes bill to curb sway of Google, Apple in app store fees, Chae Yun-hwan, 31/08/2021, <https://en.yna.co.kr/view/AEN20210830007800320>

A bill introduced in the US Senate also seeks to impose similar curbs.¹⁶ Another legislation - The Digital Markets Act - is currently under consideration in the EU.¹⁷

It is in the above context that this issue brief attempts to assess the competitive landscape in the app store market in India, highlight pressing concerns of developers, and determine the need, if any, for government intervention.

¹⁶ Open App Markets Bill, As introduced in the US Senate, <https://www.congress.gov/bill/117th-congress/senate-bill/2710>

¹⁷ Digital Markets Act (DMA): agreement between the Council and the European Parliament, 25/03/2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/03/25/council-and-european-parliament-reach-agreement-on-the-digital-markets-act/>



APP STORES AND IN-APP PURCHASE COMMISSIONS

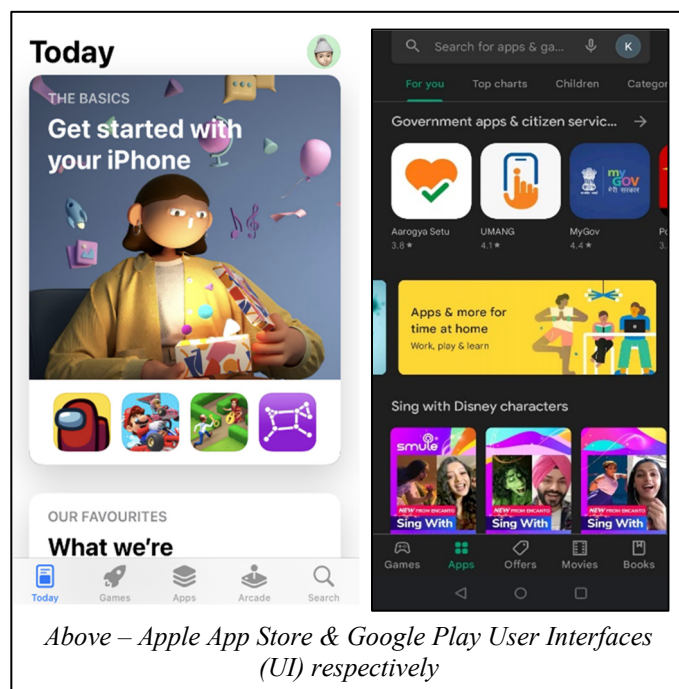
I. Apps, App Stores and their Functions

In the broadest sense, there are two kinds of apps - mobile apps and web apps. Mobile apps are written to run on a specific OS like iOS or Android and are pre-installed on a phone or downloaded from an app store. Web apps are apps built to run on an internet browser and can usually run on a web browser on any operating system. Hybrid apps which mix both the functionalities can also exist.¹⁸

An app store is a digital distribution platform for mobile apps, which allows a user to search, download, purchase and install apps with a few easy steps. They are the primary gateways through which businesses, app developers and customers interact with each other. What this means is that the app store acts like a shopfront for apps. Much like other e-commerce stores like Flipkart, customers can search, review and have apps delivered directly to their device, all in a few easy steps from one place, while also providing other valuable services like parental control, app reviews/ratings, security through scanning, rewards and customer support.

The images on the right show apps listed on app stores and categorized by function - gaming, fitness, social media etc. In addition to allowing access, the stores also enable users to update apps and report bugs to developers. Apps can also be reported to the store itself in case of inappropriate content. App stores also enable safe purchases through electronic payments and can help set up recurring payments for subscriptions.

Both the dominant app stores – on Apple and Google - require prospective apps to be subjected to an approval process, and demand that they meet safety, performance and legal guidelines before they can be listed. The checks can include verification of age ratings, adherence to local laws, scanning for viruses etc. While users benefit from this intermediation by



app stores, developers benefit too. App stores give developers ready access to large worldwide markets and provide tools for testing, quality control, instructional guides, as well as advice and support in case of technical issues. They also provide analytics about app performance, options for marketing and give feedback on metrics like number of installations/sales, insights into app use, bugs etc.¹⁹ App stores thus aim at giving a secure and streamlined experience to all parties involved. These measures help build confidence among users by providing assurance of security and basic quality. This is especially vital for small start-ups and unknown brands, which benefit from low costs of entry and trust created by app stores.

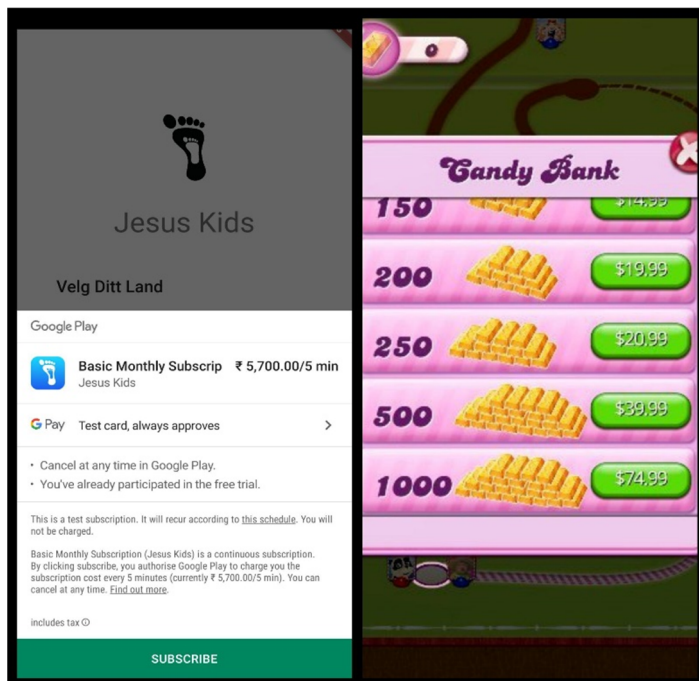
II. In-App Purchases and App Store Commissions

Due to the range of services provided by app stores (as discussed above), they incur maintenance and running costs. To cover these costs (and earn a profit), stores often charge commissions. For instance, when a user purchases an app, or subscribes to services such as music apps like JioSaavn and Gaana,

¹⁸ Types of Mobile Apps, Devopedia, 03/12/2018, <https://devopedia.org/types-of-mobile-apps>

¹⁹ App Store 2.0: From Crowdsourced Information to Actionable Feedback in Mobile Ecosystems, María Gómez et al., Page 1, HAL, 14/01/2017, <https://hal.inria.fr/hal-01406422/document>

or purchases an upgrade to a free app, the app store would take a commission out of the total price charged for these services.



Above - Subscription Services on Google Play (left) and In-App Purchases in Candy Crush (right)

In addition to charging commissions on paid apps, app stores also charge commissions on *in-app purchases* (IAP), which is basically a mechanism that lets users make purchases and subscriptions from directly within an app, without leaving the app at any point.²⁰ It was Apple that pioneered the model of in-app billing, by introducing the *App Store* on to its newly released iPhones. It was the first to allow IAPs in its apps, and to charge commissions on them in 2009.²¹ Developers hailed the move at the time for increasing the ease of payments. Google launched its own app store “Android Market” in 2008²², which was later rebranded as “*Google Play*”. However, IAPs and in-app billing were allowed on to it much later in 2011.²³

Introducing IAPs in apps gave a fillip to several apps’ business models, particularly gaming apps. IAPs enabled game developers to provide their games for free, while providing easy payment options for in-game virtual goods. Since free-to-play games attract a wider audience, the new IAP billing system allowed game developers to expand their reach, while monetizing the in-app sales that followed.²⁴ Many free apps also started using IAPs to give users an upgrade to better features or to remove advertisements.

It is to be noted that commissions are only applied to digital goods and content, as opposed to physical goods, which means that apps that provide goods and services such as groceries, taxi services, flight or train tickets etc. are not subject to any commissions. One reason provided by the app stores for this distinction is their inability to verify the delivery of physical goods and services to end customers, and/or support with after-sales issues. For digital goods, the app stores can easily track whether transactions have been fulfilled, and also provide support in case of refunds, erroneous transactions etc.

DOMINANT APP STORES AND THEIR IAP POLICIES - AN OVERVIEW

While many app stores operate in the ecosystem, the majority of apps are distributed through app stores that are natively pre-installed on iOS and Android. On the iOS, the pre-installed store is the *App Store*²⁵ and on the Android operating system, it is *Google Play*²⁶ which is pre-installed on the phone. These two stores are by far the most prominent app stores in the market. For developers, these app stores form the

²⁰ In-App Purchasing, Adam Barone, Investopedia, 27/08/2020, <https://www.investopedia.com/terms/i/inapp-purchasing.asp>

²¹ The Apple App Store: A Brief History of Major Policy Changes, Dieter Bohn, The Verge, 10/09/2021, <https://www.theverge.com/22667242/apple-app-store-major-policy-changes-history>

²² Android Market: Now available for users, Android Developers Blog, 22/10/2008, <https://android-developers.googleblog.com/2008/10/android-market-now-available-for-users.html>

²³ In-app Billing Launched on Android Market, Eric Chu, Android Developers Blog, 29/03/2011, <https://android-developers.googleblog.com/2011/03/in-app-billing-launched-on-android.html>

²⁴ Google launches in-app purchases that will make mobile apps more money, Dean Takahashi, VentureBeat, 29/03/2011, <https://venturebeat.com/2011/03/29/google-launches-in-app-purchases-that-will-make-mobile-apps-more-money/>

²⁵ *App Store*, <https://www.apple.com/in/app-store/>



²⁶ *Google Play*, <https://play.google.com/store>

predominant conduit for distributing apps, as between them, they cover most of the worldwide mobile user base. For users, they form the main gateway to discover, access, install and review apps.

The app stores of today are the largest digital distribution services in the world. As of September 2021, Apple’s *App Store* had over 2.22 million apps, while *Google Play* had over 3.48 million.²⁷ In 2020, *App Store* and *Google Play* saw over 34 billion and 109 billion app downloads, respectively.²⁸ On *Google Play*, there are about 30,000 Indian publishers, and about 1,50,000 Indian apps.²⁹ In India, *Google Play* alone accounts for over 90% of apps downloaded onto Android devices.

Unlike Google, Apple only allows apps to be downloaded onto its devices through its own store i.e. the *App Store*. No third-party app stores can be installed on iOS devices, and apps simply cannot be downloaded from anywhere except the *App Store*. Google, while hosting *Google Play* as the main app store, provides users with the option of downloading apps from other app markets and repositories. As a result, the Original Equipment Manufacturers (OEMs) of some Android phones provide alternatives such as the Samsung Galaxy Store and Xiaomi Market on Android. Some other companies also offer stores like F-Droid, Epic Games Store etc., but they have to be downloaded separately. Despite the existence of alternatives however, the market share of third-party app stores is minuscule except in China, which bans *Google Play*.³⁰ Some OEMs also receive a proportion of Google’s net revenue from *Google Play* transactions for setting *Google Play* as the default app store on their devices and for not pre-loading alternative app stores.³¹ Such agreements with device manufactures significantly impact consumer behavior and help cement the already dominant position of *Google Play* on the Android ecosystem.

In terms of fee, many developers are only required to pay a nominal listing fee to publish an app (Google charges a one-time \$25 registration fee which a developer needs to pay before they can upload an app; Apple charges \$99 per year).³² But, for developers that sell digital goods and services, the app store fee is modelled as a set rate of commission.³³ The rates (as of December 2021) are:

	<p><i>App Store</i>: 30% standard commission on apps, subscriptions and in-app purchases of digital goods and services. Sales of physical products are exempt. Subscription commission falls to 15% after a subscriber accumulates one year of paid service. Apple started the “<i>App Store Small Business Program</i>” in January 2021, reducing commissions to 15% for small business earning up to USD 1 million per annum.³⁴</p>
	<p><i>Google Play</i>: 30% standard commission on apps and in-app purchases of digital goods and services. However, there is a separate tier for which commission is 15% for the first USD 1 million in earnings per year.³⁵ In October 2021, <i>Google Play</i> also announced that for all automatically renewing subscriptions, it will charge <u>only</u> 15% fees January 1, 2022 onwards.³⁶</p>

²⁷ Number of apps available in leading app stores 2021, L. Ceci, Statista, 27/01/2022, <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/>

²⁸ Annual global mobile app downloads 2020-2025, by store, L. Ceci, Statista, 14/02/2022,

<https://www.statista.com/statistics/1010716/apple-app-store-google-play-app-downloads-forecast/>

²⁹ Indian App Market Statistics in 2022, 42 Matters, <https://42matters.com/india-app-market-statistics>

³⁰ The “Other” Android App Stores - A New Frontier for App Discovery, Elad Natanson, Forbes, 03/09/2019,

<https://www.forbes.com/sites/eladnatanson/2019/09/03/the-other-android-app-stores-a-new-frontier-for-app-discovery/>

³¹ UK CMA Interim Report, Pg. 18, Footnote 23

³² Apple App Store and Google Play fee explained, App Radar, 04/02/2021, <https://appradar.com/blog/google-play-apple-app-store-fees>

³³ As mentioned earlier, these services include app distribution, review processes, and facilitation of transactions.

³⁴ Apple announces App Store Small Business Programme, Apple Newsroom, 18/11/2020,

<https://www.apple.com/newsroom/2020/11/apple-announces-app-store-small-business-program/>

³⁵ Service Fees, Play Console Help, <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>

³⁶ Evolving our business model to address developer needs, Sameer Samat, Android Developers Blog, 21/10/2021, <https://android-developers.googleblog.com/2021/10/evolving-business-model.html>

Both the stores disallow developers from directing customers outside their store to make purchases, through certain clauses in their developer agreements known as anti-steering clauses. Apple’s anti-steering clauses have been in effect since 2011. Google’s provisions have been in place since 2008, but it announced stricter enforcement of the same only in 2020. Starting April 2022, Google has begun strictly enforcing these rules in many parts of the world. Developers not complying with Google’s payments policy can no longer submit updates to their apps. Starting 1st June 2022, all non-compliant apps would also be removed from *Google Play*. It is, in fact, only in India that Google has postponed enforcing the new rules until October 2022.³⁷

The enforcement of anti-steering clauses essentially means that developers cannot bypass the requirement of payment of commission in either of the app stores. While it is theoretically possible to avoid enforcement by switching to the use of “web apps” that can directly run on a web browser like Google Chrome, the user experience on web-based apps is not as seamless, and they cannot provide the same functionalities as downloaded apps. The alternative option to use third-party app stores is not available on iOS, and even on Android, these stores are not as widely used and hence they are nowhere close to being a real alternative. This effectively means that there is no viable alternative for developers in case they are uncomfortable with the terms being offered by Apple or Google.

REACTIONS TO IAP POLICIES

Various regulators around the world have observed and commented on the dominant status enjoyed by *App Store* and *Google Play* in their respective OS. For instance, the European Commission, while fining Google for breaching the European Union’s competition rules, observed that high barriers to entry characterize the app store market. It also noted that Google is dominant in the worldwide market (excluding China) on Android.³⁸ The commission also made similar observations about Apple while sending a statement of objection to Apple about its *App Store* policies.³⁹

In most developing countries, Android has a higher market share than Apple among mobile OS. Its market share is over 80% in Africa, Asia and South America (as of April 2022).⁴⁰ This dominance is prominent in India as well, where Android accounts for 95.1% of the smartphone user base.⁴¹ By analogy, Android’s app store, i.e., *Google Play* is practically indispensable for developers and business to have a presence in the market; not being on *Google Play* would cut access to the majority of Indian users. Therefore, as and when Google enforces its new policies, app store commissions will become unavoidable for Indian developers.

In India, many startups – particularly those providing digital services like matrimonial matchmaking, EdTech, gaming - have expressed strong discontent with *Google Play*’s policies.

In fact, when Google announced the forthcoming change in policies in 2020, within days of the announcement, 120 Indian tech startups including Paytm, Matrimony.com, Policybazaar, GOQii, India Quotient, A91 Partners, Innov8, upGrad, Dream11, TrulyMadly among others, came together to complain about the losses they would incur. Nearly 40 Indian entrepreneurs also presented their views in a virtual meeting chaired by the Secretary of the Ministry of Electronics and Information Technology (**MeitY**).⁴² Meanwhile, complaints were filed against Google at CCI, which has since begun investigations into Google’s allegedly anti-competitive conduct.⁴³

³⁷ Understanding Google Play’s Payments policy, <https://support.google.com/googleplay/android-developer/answer/10281818?hl=en>

³⁸ Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google’s search engine, European Commission, 18/07/2018, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581

³⁹ Statement by Executive Vice-President Margrethe Vestager on the Statement of Objections sent to Apple on App Store rules for music streaming providers, European Commission, 30/04/2021. https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_2093

⁴⁰ See note 1.

⁴¹ See note 2.

⁴² Over 40 Founders Raise Concerns About Google’s Billing Policy with MeitY, Shubham Singh, Inc42, 05/10/2020, <https://inc42.com/buzz/over-40-founders-raise-concerns-about-googles-billing-policy/>

⁴³ *In re: XYZ and Alphabet Inc. & Ors.*, Case No. 7 of 2020, <https://www.cci.gov.in/sites/default/files/07-of-2020.pdf>, *In re: Kshitij Arya & Another and Google LLC & Ors.*, Case No. 19 of 2020, www.cci.gov.in/sites/default/files/19-of-2020.pdf

Possibly owing to the mounting pressure in India, Google postponed the deadline to enforce its new IAP policy in India from 31st March 2022 to 31st October 2022.

There have been negative reactions internationally as well, with many antitrust and technology regulators commencing investigations into Apple and Google's business practices. Several companies in the USA, South Korea etc. have specifically contested the forced use of proprietary payment systems as well as the quantum of commissions being imposed.⁴⁴ According to Tim Sweeney, the CEO of Epic Games Inc, his company is against the lack of choices provided by app stores in payment systems.⁴⁵ Epic Games was in fact forced off Apple's *App Store* for redirecting customers to cheaper subscriptions and payments outside the *App Store*. Music and video streaming platforms such as Spotify have also been contesting the quantum of commissions, on account of in-app subscriptions forming the bulk of their revenues.

In addition to affecting the bottom lines of developers, it is also estimated that high commissions will adversely affect consumers if developers transmit the increase in their operating costs by hiking prices. An economic analysis of the digital app ecosystem in South Korea estimated a saving of 770 billion Korean Won (USD 650 million) to Korean smartphone users if legislation barring the forced use of specific billing systems was passed.⁴⁶ In South Korea, this was an important reason, among other things, why legislation pertaining to app store regulation was brought into force.

In the Indian context, the economic impact of IAP policies – through increased costs for consumers and/or decrease in innovation and competition - still remains to be determined. Since Google has repeatedly postponed the enforcement of its policies, and Apple has a significantly smaller market share in India's mobile market, a direct estimate is difficult to put together. But given the high commission rates, the anti-steering provisions and the lack of flexibility being afforded to developers, profit margins are likely to decrease significantly. **Not only could this render many business models unviable, it may also force a shift towards monetization of consumer data for advertising, while reducing innovation in the apps ecosystem and increasing the market power of larger developers.** We will elaborate on these issues in the next section.

ANALYZING APP STORE POLICIES

As mentioned earlier, all apps need to adhere to the policies set forth by an app store in order to be listed on it, and to enable in-app purchases (IAPs). Apple lists its policies under the Developer Program License Agreement⁴⁷ and App Store Review Guidelines⁴⁸ while Google has its Google Play Developer Distribution Agreement⁴⁹ and Developer Program Policies⁵⁰. These seek to maintain quality and safety of the apps available through the store. Both app stores retain the power to remove apps that violate their policies.

Below we provide an overview of some of the contentious policies of the dominant app stores.

⁴⁴ Why Google is getting heat from game companies on recent commission cuts, Joo-wan Kim, The Korea Economic Daily, 29/06/2021, <https://www.kedglobal.com/newsView/ked202106290005>

⁴⁵ Tim Sweeney on Apple's 15% cut: "We're not fighting for a lower commission", James Batchelor. Gamesindustry.biz, 19/11/2020, <https://www.gamesindustry.biz/articles/2020-11-19-tim-sweeney-on-apples-15-percent-cut-were-not-fighting-for-a-lower-commission>

⁴⁶ Daniel Jaqua, The Economic Impact on South Korea of Nationwide Bans Against Platform Exclusionary Conduct

⁴⁷ Apple Developer Program License Agreement, <https://developer.apple.com/support/downloads/terms/apple-developer-program/Apple-Developer-Program-License-Agreement-20211213-English.pdf>

⁴⁸ App Store Review Guidelines, <https://developer.apple.com/app-store/review/guidelines/>

⁴⁹ Google Play Developer Distribution Agreement, <https://play.google.com/about/developer-distribution-agreement.html>

⁵⁰ Google Play Developer Policy Center, <https://play.google.com/about/developer-content-policy/>

I. Bundling of services:

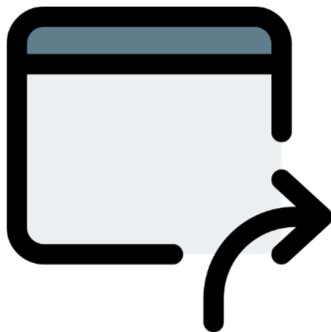
Both the dominant app stores offer a multitude of services beyond any standard payment aggregator or gateway available in the market (which typically charge 1-3% commission as processing fee). In addition to payment processing, app stores also offer services such as app review, secure download, support in app development etc. Both Google and Apple have argued that this explains why their commission rates are higher, and why these should

By bundling all services into one ‘take it or leave it’ package, app stores are making it difficult for developers to determine the correct fee for each service, while also reducing their ability to pursue alternatives for services they can procure from outside, such as for payment processing.

not be compared with vanilla payment processing services. In a recent statement, Google argued that the fee charged by the *Play Store* is meant to “cover the full range of services provided by *Google Play*”⁵¹, including the building and maintenance of the Android platform on which the entire app ecosystem thrives. Google also argued that most developers just pay a listing fee to publish their app on the app store, and only around 3% of developers are subject to a service fee.⁵²

But even if only a small percentage of developers are being charged a fee, in absolute terms, this number remains high, and the quantum of fee being charged has the potential to upset several existing business models. Price discovery is also being thwarted by the bundling of services which is increasing information asymmetry in the already complicated developer-app store relationship. By bundling all services – listing, review and approval, support in development, payments services etc. - into one ‘take it or leave it’ package, app stores are also making it difficult for developers to determine the correct fee for each service, while also reducing their ability to pursue alternatives for services they can procure from outside, such as for payment processing.

II. Anti-steering provisions:



To control the transactions between users and developers, and to enforce commission payouts, both Apple and Google require payments and IAPs to be made through their own proprietary billing systems (called *In-App Purchase* and *Google Play Billing*, respectively). Through these systems, Apple and Google handle the processing of transactions and also deduct a commission before the payment reaches the app developer.

Using these systems is compulsory and developers cannot use any other payment system⁵³ to handle transactions of paid digital goods and services. Previously some developers used to escape this provision by using a practice called “*steering*”, wherein they encouraged users to step out of the app store billing system and pay through other modes.⁵⁴ By getting their payments through alternative payment systems, developers could bypass app store commissions. However, both Apple and Google have put in “*anti steering provisions*” in their policies to discourage this practice.

On iOS devices, Apple mandates the use of its billing system, disallowing all other systems.⁵⁵ Until October 22, 2021, the App Store’s “*App Store Review Guidelines*” also specified that developers could not use information from within the app to target users outside of the app to encourage the use of other purchase methods. They could not even send emails or any other communication about alternative purchase options.⁵⁶ The rules were amended in October because of the several regulatory actions being

⁵¹ Setting the Record Straight, 09/05/2022, <https://bit.ly/3PmZ2f3>

⁵² Understanding Google Play's Service Fee, accessed on 16/05/2022, <https://support.google.com/googleplay/android-developer/answer/11131145?hl=en#zippy=%2Cchow-much-is-the-service-fee%2Cwhat-does-the-service-fee-pay-for%2Cwho-is-subject-to-the-service-fee>

⁵³ A payment gateway is a tool that enables businesses to accept payments online from anywhere via different channels and devices.

⁵⁴ *Ohio v. American Express*, https://www.supremecourt.gov/opinions/17pdf/16-1454_5h26.pdf

⁵⁵ Clause 3.1.1 and 3.1.3, App Store Review Guidelines, <https://developer.apple.com/app-store/review/guidelines/#payments>

⁵⁶ Old Rule 3.1.3, App Store Review Guidelines, <https://developer.apple.com/news/?id=4m3f5hbw>

taken against Apple's policies across the world, most prominently the decision in *Epic Games v Apple* which found its anti-steering provisions in violation of California's competition law.

Earlier, Google was not very strict about enforcing the IAP policies on *Google Play*. However, in September 2020, it said that apps choosing to sell digital content through *Google Play* would have to use the *Google Play* billing system and pay a percentage of the in-app purchase as a commission.⁵⁷ In addition, it initiated anti-steering provisions like Apple, saying that developers could not lead users to any other payment method from within the app.⁵⁸ The effect of these policies is that the commission rates charged by the *App Store* and *Google Play* cannot be avoided by developers anymore.

While it is theoretically possible for developers to bypass this system by using web apps (that run on the browser), the functionality of web apps leaves much to be desired. Web apps suffer from several problems including longer load times, a lack of notifications, lack of offline storage on the user's phone, among other things. All these constraints mean that web apps are not a viable alternative for developers at the moment.

Because of anti-steering policies, developers cannot shift to third party payment systems, even if those services are providing more functionality and options than the ones provided by Apple or Google.

Developers, businesses and some regulators have criticized anti steering-policies, terming them anti-competitive and stifling of consumer choice. Because of these policies, developers cannot shift to third party payment systems, even if those services were providing more functionality and options than the ones provided by Apple and Google in their stores. For example, Apple's *In-App Purchase* billing system does not allow developers to target discounts or promotions

to specific groups of customers, like student discounts, etc.⁵⁹ This can be detrimental to several developers' business models.

By forcing the use of their own billing systems, *Google Play* and *App Store* also become the "merchant of record" for transactions. This restricts the amount of information available to developers and inhibits their ability to provide customized offerings, improve services, detect fraud and/or directly support customers with refunds and other billing related requests.⁶⁰ Some matrimonial and social discovery apps also use payments information to conduct age verification, remove duplicate profiles and run other background and safety checks. With payments being processed by Google and Apple, developers may lose access to this crucial information that can be important for maintaining online safety and for ensuring compliance with local laws.⁶¹

Like other payment service providers, app stores also have policies with set time windows for processing payouts to developers. *Google Play*'s policies say that any orders processed, refunded, or charged-back from the 1st of a month to the end of the month will get paid out around the 15th of the following month.⁶² So if a transaction happens between 1st January and 31st January, the payout would occur on 15th February.⁶³ **Due to anti-steering provisions, developers cannot use payment service providers that provide faster settlement services.** Some gateways like Razorpay and PayU, even settle payments in 2 days;⁶⁴ this is much faster than *Google Play*. For younger businesses and startups, this may be an important metric of consideration, especially given tighter cash flow situations.

Google has relented on this policy only in South Korea because of Korea's new law barring enforcement of payment systems on developers. Apple has also made relaxations to its policies in South Korea. It

⁵⁷ Google makes Play Billings mandatory for in-app purchases from September 2021, The Economic Times, 29/09/2020, <https://economictimes.indiatimes.com/tech/internet/billings-for-in-app-purchases-must-go-through-google-play-google/articleshow/78380634.cms>

⁵⁸ Understanding Google Play's Payments Policy, Play Console Help, <https://support.google.com/googleplay/android-developer/answer/10281818>

⁵⁹ Basis stakeholder consultations with developers, name withheld on request.

⁶⁰ Summary of decision on abuse of dominant position by Apple, Netherlands Authority for Consumers and Markets (ACM), ACM/19/035630, 24/08/2021, www.acm.nl/sites/default/files/documents/summary-of-decision-on-abuse-of-dominant-position-by-apple.pdf

⁶¹ Basis stakeholder consultations with developers, name withheld on request.

⁶² Order processing and payouts, <https://support.google.com/googleplay/android-developer/answer/137997>

⁶³ Merchant payout schedule, <https://support.google.com/paymentscenter/answer/7159355>

⁶⁴ Razorpay Settlements, <https://razorpay.com/docs/api/settlements/>, PayU FAQ Settlements, help.payu.in/knowledge-center/faq-settlements

introduced changes in the Netherlands too, following the orders of the Dutch Authority for Consumers & Markets (ACM). However, the ACM has imposed fines on Apple for not following the ruling in spirit.

In March 2022 Google also announced a partnership with Spotify to launch a pilot project allowing developers to offer additional billing options along with the Google Play Billing system. While details remain sketchy at this time – including the timeline and scope of the pilot - this change is very likely in response to regulatory developments targeting its anti-steering clauses.⁶⁵

III. Search algorithms and self-preferencing

App discovery is also an important function performed by the app stores. Search queries by users are generally of two types - categorical and navigational. Categorical queries are about a type of app (e.g., music app, calculator app) while navigational queries are for specific apps (e.g., Gaana, Myntra etc.).⁶⁶ Both Apple and Google have developed search algorithms for their app stores, which display and rank apps according to the users' query. While *App Store* and *Google Play* provide some information about how their algorithm works,⁶⁷ details are relatively scarce and probably intentionally so, to prevent developers from gaming the algorithms.

Search results are a very important way for developers to gain new customers. In fact, research by the UK Competition Markets Authority (CMA) shows that the top three links in any search result, account for nearly 70% of the clicks by users.⁶⁸ This opens an avenue for Apple and Google to misuse their position as operators of app stores to distort competition by giving an advantage in rankings to their own apps over those of competitors.

Let us take music streaming as an example. Apple and Google have their own music streaming apps called Apple Music and YouTube Music respectively. They compete directly with other apps like Gaana, Wynk Music, Spotify etc., but with the added advantage of being owned by the app store's owner. Apple and Google thus have the incentive to self-preference first-party apps above their competitors. While both stores have categorically denied that they self-preference apps, some independent investigations have shown that Apple has engaged in ranking its own apps above those of its competitors.⁶⁹ And while similar evidence has not been found for Google, it is notable that Google had been fined €2.42 billion by the EU commission for abusing its dominance as a search engine.⁷⁰



Regardless of the extent of self-preferencing being pursued at the moment, the risk to the digital ecosystem remains high if the two roles i.e., managing the app store for developers, and operating their own apps – are not clearly and legally delineated.

IV. Review Processes

As mentioned earlier, both the app stores have policies in place to prohibit illegal or inappropriate content. For example, if we look at *Google Play*'s developer content policy, we see that apps are required to ensure that they do not engage in restricted content (gambling, child endangerment, illegal activities etc.), they must not impersonate other apps, or create spam, or violate intellectual property

⁶⁵ Google Play to pilot third-party billing option, starting with Spotify, Sarah Perz, 24/03/2022, <https://techcrunch.com/2022/03/23/google-play-to-pilot-third-party-billing-option-globally-starting-with-spotify/>

⁶⁶ UK CMA Interim Report, Pg. 279

⁶⁷ Search Optimization – App Store – Apple Developer, <https://developer.apple.com/app-store/search/>, App Discovery and Ranking – Play Console Help, <https://support.google.com/googleplay/android-developer/answer/9958766>

⁶⁸ Online search: Consumer and firm behaviour – A review of the existing literature, UK CMA, 07/04/2017, Pg. 3, <https://www.gov.uk/government/publications/online-search-behaviour-literature-review>

⁶⁹ How Apple's Apps Topped Rivals in the App Store It Controls, Jack Nicas and Keith Collins, The New York Times, 09/09/2019, <https://www.nytimes.com/interactive/2019/09/09/technology/apple-app-store-competition.html>

⁷⁰ Google Shopping: The General Court takes its position, Johannes Persch, Kluwer Competition Law Blog, 15/11/2021, <https://www.kluwercompetitionlaw.com/2021/11/15/google-shopping-the-general-court-takes-its-position/>

rights etc. Apps are removed if they violate the app stores' policies. Although an appeal is possible for mistaken rejections, the app store has full control over the entire process.

Developers have criticized these processes for being opaque and beset with delays. As per the UK Competition and Markets Authority's (CMA) interim report, developer concerns with Apple's *App Store* fell into three broad categories - apps being rejected without sufficient reason, changes in interpretations of guidelines and inconsistent application of the rules between apps.⁷¹ Many developers reported to the CMA that there was no direct explanation for why an app violated a certain rule, forcing them to take actions without adequate knowledge. While developers found *Google Play*'s policies to be clearer, some did say that *Google Play* was also beset with similar issues and that there were problems with the interpretation of the clauses of the developer policy.⁷²

Developers have also complained about how the stores do not provide full documentation of the review process, which can make compliance difficult. They have also highlighted that delays in the review process mean that apps remain in limbo until the process is complete, and this sometimes leads to substantial business losses. Many developers even told the CMA that they escalated issues outside the formal review process through their networks to avoid the uncertainty that often came with the formal process. When considered alongside the dominance that *Google Play* and *App Store* enjoy, the lack of procedural certainty and objectivity has the potential to distort competition in the apps marketplace.

Some developers have also questioned the quasi-regulatory role that Apple and Google have adopted in relation to users' security, privacy, and online safety. **While many policies are set to be made to benefit consumers, it is not clear if all restrictions such as those on browser functionality or disallowance of cloud gaming apps on Apple have been made in the end users' best interest.** Through the control of the *App Store*, for instance, Apple has blocked the emergence of cloud gaming, which is currently permitted on Android. The UK CMA interim report notes that "*cloud gaming is a potential threat to the model of accessing native apps through app stores, since it represents an alternative method of game discovery and distribution. Apple's policy may also protect its competitive position in mobile devices and operating systems, as cloud gaming services may reduce the importance of high-quality hardware and make it easier for users to switch between platforms.*"⁷³

Some developers have also questioned the quasi-regulatory role that Apple and Google have adopted in relation to user security, privacy, and online safety through their control of app stores.

Allegedly, apps have also been removed from the app stores abruptly without due notice in some cases. A prominent example of this is the instance with Paytm, an Indian digital payments, shopping and banking app which was removed from *Google Play* in 2020, citing Paytm's violation of *Google Play*'s policy against gambling. However, Paytm protested this move, citing differences in the interpretation of Google's rules. The removal from the store caused some panic among users, with Paytm having to issue clarifications about the safety of its customers' money.⁷⁴ According to Paytm, while *Google Play* had reached out to them about their app "Paytm First Games", it did not give them adequate notice about the removal of their main Paytm app.⁷⁵

In June 2016, Spotify also wrote to some legislators in the US complaining that Apple was "causing grave harm to Spotify and its customers" by rejecting an update to its Spotify's iOS app. The letter said that Apple had turned down a new version of the app while citing "business model rules" and demanded

⁷¹ UK CMA Interim Report, Pg. 269

⁷² UK CMA Interim Report, Pg. 272

⁷³ UK CMA Interim Report, Pg. 25

⁷⁴ Paytm dropped by Google: In the slips? Livemint.com, 18/09/2020, <https://www.livemint.com/opinion/quick-edit/paytm-dropped-by-google-in-the-slips-11600442520700.html>

⁷⁵ Google pulls India's Paytm app from Play Store for repeat policy violations, Manish Singh, TechCrunch, 18/09/2020, <https://tcrn.ch/3hHcB7g>

that Spotify use Apple’s billing system if “Spotify wants to use the app to acquire new customers and sell subscriptions.”⁷⁶

When read with the anti-steering provisions and other policies to disallow content, the app store review process gives both Google and Apple excessive control and power in determining the future of mobile digital ecosystems.

EFFECT OF APP STORE POLICIES ON THE MOBILE APP MARKET

By virtue of their dominant position, Google and Apple app stores policies have an impact on the entire app ecosystem that is relied upon by both users and developers. In the section that follows, we highlight key concerns of developers with *App Store* and *Google Play* policies while commenting on the effects these policies have on the larger app ecosystem, especially in India.

I. Effects on viability of businesses

When Google announced changes to its app store policy in 2020 mandating the use of its billing system, several Indian industry players openly opposed these changes. Their concerns were not only limited to the lack of choice in payment systems, as discussed above, but also the steep decline in profits that the commission would cause for app developers.

Many developers expressed concerns about how the commission could impact Indian startups and their long-term growth prospects. Vaibhav Vasa, Director of Indian SaaS business management mobile app Biz Analyst, said that SaaS companies in India operate on thin margins, and the imposition of high commissions would end up adversely impacting small and medium sized businesses.⁷⁷ Some Indian industry players even called for the need to develop an Indian app store⁷⁸ to contain operating costs and keep prices low for consumers. Developers from CRED, Paytm, IndusOS etc. all expressed support for this idea.

The current business model of the app store ties its profitability to the success of apps that are built and run by independent developers. This distorts the link between risk and reward.

A few policy analysts have since also commented on the skewed incentive structure in the app store market. According to Dr. Vikas Kathuria, Affiliated Research Fellow, Max Planck Institute for Innovation & Competition, in normal markets the bigger the risk you take, the greater the reward you take home. However, in the app store market, the business model of the app

store is tying its profitability to the success of individual apps. “So, if an app becomes successful, it’s just not the app that is making money, it’s the operating system (or app store) that is making money. And this distorts the risk-should-be-proportional-to-incentive structure.”⁷⁹ As a result, even as the developer shoulders the real business risk, *Google Play* and *App Store* revenues increase if the developer’s app does well, without the stores having to put in any commensurate effort. The problem is further compounded by the lack of competition in the app store market, which means there is no pressure to improve services or to offer competitive pricing to retain the business of developers.

The Internet and Mobile Association of India (IAMAI), an industry body of businesses engaged in online and mobile value-added services, has said that Google should not arbitrarily enforce its rules just because it *owns the gates* to India’s digital ecosystem.⁸⁰ It has also said that Google’s moves are

⁷⁶ Spotify says Apple won’t approve a new version of its app because it doesn’t want competition for Apple Music, Peter Kafka, Vox, 30/06/2016, <https://www.vox.com/2016/6/30/12067578/spotify-apple-app-store-rejection>

⁷⁷ India’s startup-tech ecosystem term Google Play’s new payment policy, other rules ‘Digital (Colonization of) India’, Rashi Varshney, YourStory, 02/10/2020, <https://yourstory.com/2020/10/india-tech-startup-ecosystem-term-google-plays-new-payment-policy/amp>

⁷⁸ See note 76.

⁷⁹ Deep Dive: What issues do app developers face and how should app stores be regulated, Sarvesh Mathi, Medianama, 03/03/2022, <https://www.medianama.com/2022/03/223-app-store-market-issues-regulations/>

⁸⁰ See note 76.

reminiscent of the time when telecommunication companies would take almost 70% commissions on the revenues of Value-Added Services (VAS) companies.⁸¹

It is interesting that the UK government's Competition and Markets Authority (CMA)'s interim study on mobile ecosystems seems to echo that line of thinking. The report says that both companies - Apple and Google - seem to be charging commissions well above a competitive rate, which means that users will be impacted by higher prices for digital goods, in-app purchases and subscriptions.⁸² The report also notes that the proposed reduction in IAP commissions to 15% for a majority of app developers (especially those earning under USD 1 million of earnings per year) will not have a material impact on the average commission rates for Apple and Google which remain close to 30%. This suggests that discounts only apply to a small proportion of transactions, and the vast majority of Apple's and Google's app store revenues continue to come from a small number of large apps.⁸³

UK Competition and Markets Authority (CMA)'s interim study says that both companies - Apple and Google - seem to be charging commissions well above a competitive rate.

A quick scan of product prices does suggest that developers may pass on the additional costs to consumers.

The image displays three screenshots of the YouTube Premium subscription offer, arranged in a clockwise order from top-left to bottom-center. Each screenshot features the YouTube Premium logo at the top, followed by the text 'YouTube and YouTube Music ad-free, offline, and in the background'. A blue button labeled 'GET YOUTUBE PREMIUM' is prominently displayed. Below the button, the price is listed as ₹169.00/month. Additional text includes 'Or save money with a family membership' and 'Your membership starts as soon as you set up payment and subscribe with iTunes.' The bottom-right screenshot includes a small downward arrow icon.

Above - Subscription Price on Apple, Android and the Web (in clockwise order)

⁸¹ A value-added service (VAS) is a telecom industry term for non-core services, i.e., all services beyond standard voice calls.

⁸² UK CMA Interim Report, Pg. 63, Para 2.70.

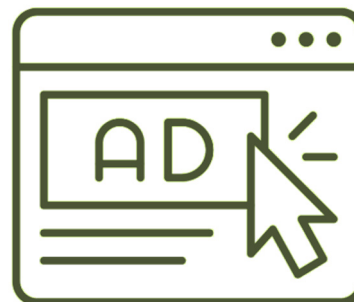
⁸³ UK CMA Interim Report, Pg. 184, Para 4.227-4.228

The images above show subscription prices for YouTube Premium on an Apple mobile, an Android phone and the web in India (in February 2022). While a monthly subscription to YouTube premium cost INR 129 per month on the web and through Android, it was priced at INR 169 per month on the Apple mobile (a ~30% increase on the web and Android price).

In addition to increasing costs for consumers, the above pricing suggests distortion in competition. The lack of a price differential between the web and Android version suggests that Google's own products (YouTube in this case) are not subject to the same commission charges as other apps on Android.

II. Shift towards business models that monetize customer data

Google and Apple's anti-steering rules may put pressure on app developers to explore alternative business models that help bypass the payment of commissions. As things stand, apps that rely on advertising revenue are not required to pay commissions to *Google Play* and *App Store*. Ads are paid for marketers directly and do not involve in-app purchases. As such, Google and Apple cannot charge any commission from ad-based businesses under their current policies. Facebook, Instagram, LinkedIn and other such apps are examples of ad-based business models that have very large user bases on mobile phones, earn millions of dollars in ad revenue, and yet are not required to pay a commission.



Under pressure from Google and Apple, developers may tweak business models to rely more on advertising. However, such a shift may not bode well for customers. Ad-based models rely on user data to provide targeted advertising, which could have a negative impact on user privacy as a whole. In-app advertising requires software such as Admob by Google, Ads by Facebook etc. to be integrated into the app itself. These generate advertisements based on data collected on the user and app developers are compensated on metrics such as Cost per Mille (Every 1000 users who see the advertisement), Cost per Click (when the ad is clicked).⁸⁴

Several organizations have expressed reservations with the collection of the vast trove of personal data and the detailed targeting of ads that such models entail. Large ad networks can collect data across several apps to build a full profile of customers, which can be detrimental to privacy.⁸⁵ Although there is some evidence to show that ads that target based on a user's behaviour and profile are not as accurate as projected, the proliferation of the model has meant that a lot of personal data (including personally identifiable information such as location, gender etc.) is collected by advertisers, sometimes without their consent, to target ads to them.⁸⁶ Regulations have already started coming up in various jurisdictions such as the EU to stem this problem. Regulatory bodies have taken action too – Italy's antitrust body has already fined Google and Apple €10 million each for aggressive practices linked to the commercial use of data.⁸⁷ In the US, there is a new bill called the "Banning Surveillance Advertising Act" in the Senate seeking to ban targeted advertisements altogether.⁸⁸

III. Commercially sensitive information available to App Stores

Through the apps review process, developers must submit their apps (including any planned updates) for review before they can be published. This can give app-store operators access to commercially sensitive information such as insights into upcoming features that an app may be planning. It is also

⁸⁴ How In-App Advertising Works for App Monetization, Ashley MacQuarrie, The Manifest, 07/03/2018, <https://themanifest.com/app-development/blog/in-app-advertising>

⁸⁵ Risky Business: The Current State of Teen Privacy in the Android App Marketplace, BBB National Programs, 29/10/2020, https://industryselfregulation.org/docs/librariesprovider5/default-document-library/tapp_whitepaper.pdf

⁸⁶ Ad 'Relevancy' Is Fiction, And It's Creepy, Augustine Fou, Forbes, 19/04/2021, <https://www.forbes.com/sites/augustinefou/2021/04/19/ad-relevancy-is-fiction-and-its-creepy/>

⁸⁷ Italy's antitrust regulator fines Google, Apple over data use, Reuters, 30/11/2021, <https://www.reuters.com/technology/italys-antitrust-fines-google-apple-commercial-use-data-2021-11-26/>

⁸⁸ Democrats unveil bill to ban online 'surveillance advertising', Makena Kelly, The Verge, 18/01/2022, <https://www.theverge.com/2022/1/18/22889903/democrats-targeted-advertising-facebook-google-surveillance>



worried that forced use of *Google Play* and *App Store* billing systems can further compound this problem by making additional commercially sensitive data available to Google and Apple.

In an antitrust hearing held in the US Senate in April 2021, Apple and Google were specifically questioned on this issue to understand if they had a “strict firewall” to prevent the misuse of information from third-party businesses operating on their app stores to inform the development of their own competitive products. Both answered that they had some internal policies and controls in place but hesitated to say there was a firewall.⁸⁹

App developers are worried because both Apple and Google offer competitive products to several third-party apps that are listed on their app stores. An example of such a service/product, as discussed earlier, is music streaming. Some businesses like Spotify and ProtonMail have made submissions to the UK Competition and Markets Authority (CMA) saying that Google and Apple potentially misuse data from their stores to guide commercial decisions for their own competing products.⁹⁰

Since Apple and Google have access to the payment gateways for their stores, they could potentially gain insights into the same and use it to make decisions for their products. Insights gained from payments data in IAPs and for paid apps could also be used to determine pricing models for their existing and upcoming products.⁹¹

INTERNATIONAL DEVELOPMENTS IN APP MARKET REGULATION

Several jurisdictions around the world have started taking notice of the growing market power of Google and Apple and the potential abuse of that power. From passing legislation to conducting investigations, many policymakers are looking to proactively maintain the competitiveness of the mobile digital ecosystems in their countries. In the following section, we summarize major developments from across the world. More details are available in the **appendix**.

South Korea

South Korea’s National Assembly recently passed an amendment to its Telecommunications Business Act in August 2021⁹² and it came into effect on 14th September 2021. This legislation prohibits Apple and Google from mandating the use of their in-app payment systems for in-app purchases of digital content. It also contains provisions that prohibit Apple and Google from “inappropriately” delaying the review of, or deleting, mobile content from app markets. The law also allows the South Korean government to require an app market operator to “prevent damage to users and protect the rights and interests of users”, probe app market operators, and mediate disputes regarding payment, cancellations or refunds in the app market.⁹³

USA

The bipartisan Open App Markets Bill⁹⁴ recently introduced in the US Congress is targeted specifically at app stores and is much broader in scope than the South Korean legislation. The Bill aims to promote competition and reduce gatekeeper power in the app economy, increase choice, improve quality, and reduce costs for the consumers. The Bill, as it stands, applies to ‘covered companies’, who own or

⁸⁹ Apple and Google pressed in antitrust hearing on whether app stores share data with product development teams, Sarah Perez, TechCrunch, 22/04/2021, <https://tcrn.ch/32ArMKb>

⁹⁰ UK CMA Interim Report, Pgs. 290-292

⁹¹ UK CMA Interim Report, Pgs. 288-290

⁹² Telecommunications Business Act Prohibiting Forced In-App Payment Methods Goes into Effect, Korea Communications Commission, <https://eng.kcc.go.kr/user.do?mode=view&page=E04010000&dc=E04010000&boardId=1058&cp=1&boardSeq=51898>

⁹³ South Korea's parliament passes bill to curb Google, Apple commission dominance, Heekyong Yang, Reuters, 01/09/2021, <https://www.reuters.com/technology/skoreas-parliament-passes-bill-curb-google-apple-commission-dominance-2021-08-31/>

⁹⁴ Open App Markets Bill, As introduced in the US Senate, <https://www.congress.gov/bill/117th-congress/senate-bill/2710>

control an app store with more than 50 million users in the United States, a criterion that covers Apple and Google (based on their current US customer base). The proposed provisions of the Bill include a requirement to allow downloading of apps through alternative means; a prohibition on mandating the use of an app store's own in-app payment system; a prohibition on anti-steering provisions; and restrictions on self-preferencing through search or use of data.⁹⁵

European Union (EU)

In late March this year, the European Parliament announced that it had reached an agreement on a *Digital Markets Act (DMA)*.⁹⁶ While the legal text is currently being finalized, from the available details, it appears that DMA rules will apply 6 months after the law is passed and the law is likely to fully come into effect in early 2024, giving companies a two year window for compliance.

The DMA provisional text currently includes measures to regulate large online platforms who can be categorized as 'gatekeepers', a criterion that would include both Apple and Google. Under this proposal, gatekeepers will be required to comply with certain obligations including improving access to, and portability of, data; improving users' ability to remove default apps and software; allowing apps to be downloaded through alternative stores; providing access to app stores on fair and non-discriminatory conditions; restricting the tying of services to platforms (e.g.: in-app payment systems); restricting anti-steering measures; and restricting self-preferencing (in terms of access, data and rankings).⁹⁷

A number of antitrust investigations and litigation are also ongoing in different parts of the world. These include, among others, cases in India, US, EU, Japan, South Korea, Australia, China, and the UK, and target both the app store market and the broader dominance of Apple and Google on the mobile ecosystem. The details of these developments can be found in the **appendix**.

LIMITS OF ANTITRUST REGULATION

Competition regulators across the world, such as in Japan, Russia, Italy and Netherlands, are currently investigating Apple and Google for anti-competitive conduct. As discussed earlier, the Competition Commission of India (CCI) is also carrying out investigations against Apple and Google, including their app store policies. However, there are certain limitations to such antitrust measures.

A case in point is the ruling of the Netherlands' competition authority (ACM) which found the anti-steering provisions of Apple's *App Store* anti-competitive and detrimental to dating app developers' rights. It asked Apple to make changes so that app developers were able to choose a service provider to process payments for in-app purchases and it imposed a deadline of January 15th, 2022 for compliance with its ruling.

Although Apple allowed developers of dating apps to use their own payment systems, it reduced its commission by only 3% in response to the order. It also announced onerous administrative overheads on apps choosing other payment systems, while asking them to adopt specific APIs to be able to offer third-party payment options. Apple also said it would have audit rights over developers record of digital transactions and said that "*in the future, if Apple develops technical solutions to facilitate reporting, developers will be required to adopt such technologies.*"⁹⁸

The ACM was unsatisfied with Apple's measures - first for missing the January 15th deadline, and then for creating expensive technical burdens for dating apps to adopt third-party payment systems. By the

⁹⁵ A new Senate bill would totally upend Apple and Google's app store dominance, Taylor Hatmaker, TechCrunch, 12/08/2021, <https://tcrn.ch/3jQZ8fX>

⁹⁶ Deal on Digital Markets Act: EU rules to ensure fair competition and more choice for users, European Parliament Press Release, 24/03/2022, <https://www.europarl.europa.eu/news/en/press-room/20220315IPR25504/deal-on-digital-markets-act-ensuring-fair-competition-and-more-choice-for-users>

⁹⁷ EU Parliament Gives Green Light to Digital Markets Act, Hunton Andrews Kurth's Privacy and Cybersecurity, The National Law Review, 23/12/2021, <https://www.natlawreview.com/article/eu-parliament-gives-green-light-to-digital-markets-act>

⁹⁸ Distributing dating apps in the Netherlands, Apple Developer Blog, <https://developer.apple.com/support/storekit-external-entitlement>

28th of March, it had already imposed ten weekly fines, totaling a penalty of €50 million on Apple.⁹⁹ While Apple has submitted a revised proposal to the ACM, the ACM is not satisfied with the suggested changes and is reportedly considering additional penalties.¹⁰⁰ The European Union's head of digital policy, EVP Margrethe Vestager, accused Apple of deliberately choosing to pay fines instead of complying with the law.¹⁰¹

This tussle between the ACM and Apple showcases the limitations being faced by competition regulators. Apple only partially complied with the rulings, and its measures did not improve developers' choices. Instead, it became even more expensive for them to move out of Apple's payment gateways.

In India, as in many other countries, the prevailing Competition Acts are *ex post* which means that they are designed to penalize anti-competitive behaviour only after it has already occurred. Competition cases such as the ones currently under investigation also require in-depth technical research that usually results in lengthy proceedings. Unfortunately, given the pace at which digital markets move, such *ex post* measures may be too delayed to prevent irreparable harm to affected parties.

In the case of digital markets such as app stores, action under the existing competition regimes also seems to be insufficient. In India, as in many other countries, the prevailing Competition Acts are *ex post* which means that they are designed to penalize anti-competitive behaviour *only* after it has already occurred. Competition cases such as the ones currently under investigation also require in-depth technical research that usually results in lengthy proceedings. Unfortunately, given the pace at which digital markets move, such *ex post* measures may be too delayed to prevent irreparable harm to affected parties. Both Apple

and Google benefit from network effects; they have large user bases globally and sustain siloed monopolies¹⁰² through their lack of interoperability. If there is an abuse of market power, developers may be left with no viable alternative and may face irrevocable harm in fast-moving digital markets where speed of innovation and quick uptake of products is of the essence. As a result, *ex post* monetary penalties are unlikely to be fully effective in dealing with the issue.

Given these limitations, policymakers in some countries are considering passing legislation to govern app stores. These legislations would be *ex ante* i.e., they would aim to prevent market failures or distortions by identifying problems beforehand and shaping stakeholder behaviour by telling businesses how to behave and what to do.¹⁰³

The European Commission, which is considering legislative proposals for a *Digital Markets Act (DMA)* has already noted this need.¹⁰⁴ The European Commission has reasoned that the dominant app stores are core platform services¹⁰⁵ because of their large economies of scale, network effects and market power over businesses, among other reasons.¹⁰⁶ And since unfair practices in such core platform services can lead to undesirable outcomes like high prices, reduced choice for consumers and less innovation in the market, there is a need for government intervention.

⁹⁹ See note 10.

¹⁰⁰ Apple's third-party payment proposal isn't enough for Dutch regulators, The Verge, 03/05/2022,

<https://www.theverge.com/2022/5/2/23053935/apple-app-store-acm-proposal-rejected-further-fines-dating-apps>

¹⁰¹ EU swipes at Apple snubbing Dutch antitrust enforcement, Natasha Lomas, TechCrunch, 23/02/2022, <https://tcrn.ch/3p83cfe>

¹⁰² Because of the lack of interoperability between Apple's iOS and Google's Android, customers who use either OS will face several difficulties in switching to the other OS. Apps designed for one OS cannot run on the other. This gives Apple and Google full control of the ecosystem created by their OSes, thus silo-ing them from one another.

¹⁰³ In comparison, under *ex-post* regulations consumers and producers are allowed to act according to what they believe maximizes welfare and regulators intervene only when a market failure or distortion has occurred.

¹⁰⁴ The Digital Markets Act: ensuring fair and open digital markets, European Commission, https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

¹⁰⁵ The European proposal for a Digital Markets Act: A first assessment, Centre on Regulation in Europe, 19/01/2021, https://cerre.eu/wp-content/uploads/2021/01/CERRE_Digital-Markets-Act_a-first-assessment_January2021.pdf

¹⁰⁶ See note 95.

CONCLUSION

By virtue of their dominant position and lack of interoperability, iOS and Android form siloed monopolies which allows them to unilaterally impose contract terms. In the absence of viable distribution alternatives, developers often find themselves in a ‘take it or leave it’ situation.

Considering the market power wielded by Apple and Google over mobile digital distribution platforms, there is an urgent need to ensure fair competition and improve choices for both developers and consumers. By virtue of their dominant position and lack of interoperability, iOS and Android form siloed monopolies¹⁰⁷ which allows them to unilaterally impose contract terms, without

negotiation. In the absence of viable distribution alternatives, developers often find themselves in a ‘take it or leave it’ situation with regard to app store policies, including mandates on high commission.

As discussed in this issue brief, it is difficult to determine a fair rate of commission due to the absence of competition in the market. Aside from affecting bottom lines, the current commission rates can also drive developers out of business, while forcing others to change business models. Such a situation is likely to particularly affect the Indian mobile-first digital ecosystem, which is heavily reliant on these dominant app stores for market access.

The Competition Commission of India (CCI) is currently investigating both *App Store* and *Google Play* for their store policies, particularly their payments policies. With the Additional Director General filing a report and further hearings to begin shortly, the developments in this case are likely to have major implications on the mobile app ecosystem in India.¹⁰⁸ However, it is also possible that CCI’s regulatory action might not be able to address the core issue of market dominance and gatekeeping, as evidenced by the experience in Netherlands. It is in this context, that the legislative approach being adopted in the EU through the Digital Markets Act, and in South Korea through amendments to the Telecommunications Act might offer a road ahead for India.

Having said that, the option of enacting a legislation is likely to come with its own set of challenges, especially the risk of over-regulating a rapidly evolving ecosystem. Therefore, any legislation that attempts to do this must also have the flexibility to account for emerging business models and new developments in the digital sector, so that it does not constrain innovation. Extensive consultations would have to be undertaken with stakeholders such as the app stores themselves, as well as app developers and consumers to arrive at the least invasive option of regulating the app market.

The need of the hour is a balanced approach, and CCI’s decision will likely play a key role in determining how policymakers look at the issue in the future. In this context, it is interesting to note that the Parliamentary Standing Committee on Finance has already taken cognizance of the larger issue of anti-competitive practices by big technology companies and is currently seeking inputs to effectively regulate India’s digital economy.¹⁰⁹

¹⁰⁷ See note 101.

¹⁰⁸ How CCI may have more trouble for Google, Tarush Bhalla, Gadgets Now, 31/03/2022, <https://www.gadgetsnow.com/tech-news/how-cci-may-have-more-trouble-for-google/articleshow/90565809.cms>

¹⁰⁹ Parl panel to summon Google, Twitter, Amazon, other big tech firms to discuss their competitive conduct, Economic Times, 28/04/2022, <https://economictimes.indiatimes.com/tech/tech-bytes/parl-panel-to-summon-google-twitter-amazon-other-big-tech-firms-to-discuss-their-competitive-conduct/articleshow/91154905.cms>



ANNEXURE – INTERNATIONAL DEVELOPMENTS

Country	Legislative Action	Antitrust developments
South Korea	<p>South Korea’s National Assembly passed a landmark Bill in 2021 that forces Google and Apple to open their app stores to alternative payment systems. The key aspects of the law are:</p> <ul style="list-style-type: none"> ● Prevents companies that run app stores from forcing developers to use the store’s in-app payment systems. ● Prohibits the companies from delaying the approval of apps and inappropriately deleting the apps from their stores based on arbitrary reasons. ● In case of any disputes between app developers and app stores, the government is allowed to conduct probes and mediate disputes. ● Companies that fail to comply with these new rules could be fined up to 2% of their revenue earned in South Korea. <p>On 10th March 2022, the Korea Communications Commission (KCC) unveiled guidelines clarifying potential violations of the law.¹¹⁰ Under this new enforcement decree, app store operators would have to pay up to 2% of their revenue as penalty if they force anti steering provisions, and 1% for delayed review processes. KCC would determine and promulgate specific standards for determining unfairness in such cases.</p>	<p>In September 2021, the Korea Fair Trade Commission (KFTC) fined Google for abusing its market position to stop device manufacturers from using modified versions of Android. Specifically, the KFTC had an issue with the anti-fragmentation agreements (AFA) Google has manufacturers like Samsung sign, which prevents them from making any changes to the operating system.¹¹¹</p>
USA	<p>US lawmakers introduced a new bipartisan Bill titled ‘Open App Markets Act’ that goes further than the South Korean legislation in regulating the app store market. The Bill:</p> <ul style="list-style-type: none"> ● Prohibits bans on developers who wish to promote off-platform discounts or alternative ways to purchase apps, memberships, or in- 	<p>Public cases</p> <ul style="list-style-type: none"> ● In July 2021, a group of 36 states and the District of Columbia sued Google over claims that its app store abuses its market power and forces aggressive terms on software developers. The suit was the fourth state or federal antitrust lawsuit filed

¹¹⁰ S. Korean regulator unveils guideline on world's 1st in-app payment law, Yonhap News Agency, 10/03/2022, <https://en.yna.co.kr/view/AEN20220310010600320>

¹¹¹ Google found guilty of restricting Android forks in South Korea, fined \$177 million, Jon Porter, The Verge, 14/09/2021, <https://www.theverge.com/2021/9/14/22673202/google-south-korea-android-fork-fine-anti-fragmentation-agreement-antitrust>

	<p>app content. The Bill would allow developers to direct customers to their website.</p> <ul style="list-style-type: none"> • Permits users to directly download apps from outside OS owned app stores. • Mandates that developers be given access to software and hardware features of the device and OS interfaces that are currently only available to OS owned apps. Further, the Bill requires companies to refrain from leveraging non-public information collected through their platforms to create competing apps. <p>Another law under consideration in the US is the <i>American Innovation and Online Choice Bill</i>.¹¹² This law:</p> <ul style="list-style-type: none"> • Seeks to prohibit tech platforms from self-preferencing their products or services, or discriminating among businesses that use their platforms in a manner that materially harms competition on the platform. • Forbids covered platforms from preventing interoperability with other services; and leveraging non-public data from other businesses to compete with them. 	<p>against Google but the first to scrutinize the company's app store.¹¹³</p> <p>Private enforcement</p> <ul style="list-style-type: none"> • <u>Cameron et al vs Apple Inc.:</u> Apple agreed to settle a case brought by a group of app developers regarding Apple's management of the <i>App Store</i> for the iPhone and iPad (and in particular its abuse of dominant position to impose high commission fees).¹¹⁴ • <u>Epic Games, Inc vs Google LLC et al and Epic Games, Inc vs Apple Inc relating to app store practices:</u> Epic Games, maker of the popular Fortnite game, challenged Google and Apple last year by adding its own payment system within its app to avoid the 30% commission. Owing to this development, both Google and Apple removed Fortnite from their app stores, leading to a legal challenge from Epic Games.¹¹⁵ <p>In a September 2021 ruling in the first part of the case, the Judge ruled in favor of Apple on nine of ten counts. While Apple is not considered a monopoly and did not engage in antitrust behavior on nine of ten counts, Apple's conduct in enforcing anti-steering restrictions is anti-competitive, the court held.</p>
EU	<p>EU's Digital Markets Act (DMA) is a legislative proposal from the European Commission intended to ensure a higher level of competition in European digital markets. The provisions of the proposal are built on 3 principles:</p> <ul style="list-style-type: none"> • Principle 1: Ensure that these platforms conduct themselves fairly online. 	<p>Spotify vs Apple</p> <ul style="list-style-type: none"> • In 2019, Spotify filed an antitrust complaint against Apple with the European Commission (EC).¹¹⁷ Apple had been accused of violating competition law by mandating the use of Apple's own proprietary IAP system for the distribution of paid digital content.

¹¹² The first big tech antitrust bill lumbers toward reality, Taylor Hatmaker, TechCrunch, 21/01/2022, <https://tcrn.ch/3qleAQh>

¹¹³ Dozens of States Sue Google Over App Store Fees, David McCabe and Daisuke Wakabayashi, The New York Times, 07/07/2021, <https://www.nytimes.com/2021/07/07/technology/google-play-store-antitrust-suit.html>

¹¹⁴ Apple settles antitrust case with developers, but it's far from an Epic resolution to App Store monopoly concerns, Simon Sharwood, The Register, 27/08/2021, https://www.theregister.com/2021/08/27/apple_vs_cameron_et_al_settlement

¹¹⁵ *Epic Games, Inc. v. Apple Inc.*, Case No. 4:20-cv-05640-YGR, <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>

¹¹⁷ Timeline – Time to Play Fair, <https://timetoplayfair.com/timeline/>

	<ul style="list-style-type: none"> ● Principle 2: Ensure that technological start-ups and entrepreneurs have new opportunities to compete and innovate in the online platform environment, without having to subject themselves to unfair conditions that limit their development. ● Principle 3: Through this greater competition, ensure that consumers will have more and better services to choose from, more opportunity to switch providers if they wish, direct access to services, and fair prices. <p>In case of non-compliance with the obligations, the Commission can issue a non-compliance decision and impose fines of up to 10% of an undertaking's total worldwide turnover in the preceding financial year, and 20% in case of repeated infringements.</p> <p>There's also a minimum sanctions cap, which prevents the commission from imposing a fine that is less than 4% of the company's turnover. The Act also allows the Commission to impose periodic penalty payments on undertakings of up to 5% of the average daily turnover for each day's delay in taking various actions, including replying to an information request and complying with a provision.</p> <p>The European Parliament announced that it reached an agreement on the law in late March 2022. The legal text is currently being finalized, but from the available details, it appears that DMA rules will apply 6 months after the law is passed and the law is likely to fully come into effect in early 2024, giving them a two year window for compliance.¹¹⁶</p>	<ul style="list-style-type: none"> ● As per Spotify's claim, Apple also applied a series of technical and experience-limiting restrictions that make Spotify an inferior experience in cases of non-payment of commission. <p>European Commission's investigation</p> <ul style="list-style-type: none"> ● In April 2020, the Commission informed Apple of its preliminary view that Apple distorted competition in the music streaming market as it abused its dominant position for the distribution of music streaming apps through the <i>App Store</i>. It had two concerns - the 30% commission on IAPs, the cost of which developers were passing on to end users, and the store's anti-steering provisions.¹¹⁸ ● On 16th June 2020, the Commission announced that it had opened formal antitrust investigations to assess whether Apple's rules for app developers on the distribution of apps via the <i>App Store</i> violate EU competition rules.¹¹⁹ ● The investigation would concern the application of these rules to all apps, which compete with Apple's own apps on the store. Separate investigations would look at the impact of the rules on music streaming and ebooks/audiobooks. ● The Commission also opened a formal investigation to assess whether Apple's conduct in connection with Apple Pay violates EU competition rules, in addition to the commission issue. Additionally, it was concerned about Apple getting access to valuable data about the activities and offers of its competitors.¹²⁰
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¹¹⁶ See note 95.

¹¹⁸ Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers, European Commission, 30/04/2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061

¹¹⁹ Antitrust: Commission opens investigations into Apple's App Store rules, European Commission, 16/06/2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073

¹²⁰ Antitrust: Commission opens investigation into Apple practices regarding Apple Pay, European Commission, 16/06/2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1075

United Kingdom	NA	<p>Cases against Apple and Google have been filed in the UK alleging (i) that Google unfairly restricts consumers from accessing competitive apps from other app distributors, by requiring smartphone manufacturers to pre-install a bundle of Google’s proprietary apps and services including <i>Google Play</i> as well as imposing other contractual and technical restrictions; and (ii) that Apple uses its dominant position by imposing restrictive terms on app developers, stifling efforts by other would-be distributors to offer app purchasers better value for money, and reaping excessive profits.</p> <p>Also, the UK government’s Competition and Markets Authority (CMA) launched an investigation into Google and Apple’s effective duopoly over the supply of operating systems (iOS and Android), app stores (<i>App Store</i> and <i>Google Play</i>), and web browsers (Safari and Chrome). The investigation is examining the amount of power Google and Apple have in the distribution of mobile apps and the extent to which there are suitable alternatives to the default app stores. It is also looking to examine if Google and Apple are using their position to launch competing apps and services and if these are favored over third-party apps when showcased to consumers.</p> <p>The CMA recently released an interim report highlighting some of its findings.¹²¹ The final report is expected to be published by 14th June 2022.</p>
Japan	NA	<p>In September 2021, the Japan Fair Trade Commission (JFTC) announced that it was closing its investigation into Apple for suspected abuse of dominance in relation to its <i>App Store</i>. The investigation looked into Apple’s anti-steering provisions for violation of Japan’s Antimonopoly Act.</p> <p>The investigation was closed because Apple agreed to revise its <i>App Store</i> Guidelines by allowing certain ‘read-only’ apps, such as</p>

¹²¹ UK launches investigation into market power of Google and Apple, Sarvesh Mathi, Medianama, 16/06/2021, <https://www.medianama.com/2021/06/223-uk-investigation-google-apple/>

		<p>Netflix and Spotify to refer to payment options on websites.¹²²</p> <p>Later, it began investigating whether Apple and Google are using their market dominance to limit competition and leave consumers at a disadvantage.¹²³</p>
China	NA	<p>A Chinese consumer, Jin Xin, had filed an antitrust lawsuit against Apple, demanding the removal of the 30% commission on purchases in the China <i>App Store</i>. He also demanded allowing Chinese consumers to make payments through wallets other than Apple Pay, providing US \$15,500 in compensation and issuing a public apology.</p> <p>China's Supreme Court in September 2021 dismissed Apple's plea and ruled that the antitrust lawsuit against the company's China entity can proceed. In its plea, Apple argued that the lawsuit should not be allowed because its China entity does not deal with <i>App Store</i> operations. The court, however, said that Apple had potentially abused its market position and undermined competition, and hence the case can be heard.¹²⁴</p>
Russia	NA	<p>In Russia, the Federal Anti-monopoly Service (FAS) gave Apple a warning over abusing its dominant position in the distribution market for iOS apps and asked the company to eliminate violations. The FAS also launched an antitrust investigation into Apple's <i>App Store</i> for not allowing developers to link to third-party payment systems. Apple, in response, has started legal proceedings against Russia's anti-monopoly regulator.¹²⁵</p> <p>In April 2021, the FAS separately fined Apple \$12 million over complaints that it unfairly cracked down on third-party parental control apps. Kaspersky Lab had complained to the FAS of being forced to limit the functionality of its app in iOS.</p>

¹²² In a major concession, Apple to allow apps like Netflix and Spotify to link out to the web for signups, Sarvesh Mathi, Medianama, 02/09/2021, <https://www.medianama.com/2021/09/223-apple-app-store-policy-update-japan-ftc/>

¹²³ Apple and Google under antitrust scrutiny in Japan for mobile OS, Satsuki Kaneko and Ryohei Yasoshima, Nikkei Asia, 07/10/2021, <https://asia.nikkei.com/Business/Technology/Apple-and-Google-under-antitrust-scrutiny-in-Japan-for-mobile-OS>

¹²⁴ China's Supreme People's Court has Ruled against Apple, allowing a lawsuit to Proceed on Antitrust Grounds, <https://www.patentlyapple.com/patently-apple/2021/10/chinas-supreme-peoples-court-has-ruled-against-apple-allowing-a-lawsuit-to-proceed-on-antitrust-grounds.html>

¹²⁵ Russia slaps Apple with warning over abusing dominant market position, TASS, 30/08/2021, <https://tass.com/economy/1331787>

Netherlands	NA	<p>The Dutch investigation into whether Apple's practices amounted to an abuse of its dominant market position was launched in 2019 but later reduced in scope to focus primarily on dating apps. This included a complaint from the Match Group, owner of the popular dating service Tinder, which said Apple's rules were hindering it from direct communication with its customers about payments.¹²⁶</p> <p>In October 2021, the Dutch antitrust regulator, Authority for Consumers and Markets (ACM), found that Apple's rules requiring app developers to use its own payment system are anti-competitive. It demanded changes in the company's IAP policies, giving it a deadline of 15th January 2022 to comply.</p> <p>Apple announced some changes to comply with this, but it reduced its commission by only 3% for developers using other payment systems. It also said that apps would have to create new app binaries for the Dutch market, and users would have to switch to a new version of the app to pay through other payment systems.</p> <p>ACM found these changes unsatisfactory and imposed weekly fines on Apple. The total penalty as of 28th March 2022 amounted to €50 million.¹²⁷ Apple dropped the requirement for separate app binaries after the ten fines.</p> <p>While Apple has submitted a revised proposal to the ACM, the ACM is not satisfied with the suggested changes and is reportedly considering additional penalties.¹²⁸</p>
Australia	NA	<p>The Australian Competition and Consumer Commission (ACCC) had launched an investigation into the practices of Apple and Google in September 2021. The aim of this investigation was to examine issues including the use and sharing of data by apps and the extent of competition between Google and Apple's app stores. Based on the responses by the industry, the regulator released a</p>

¹²⁶ Apple must let dating apps offer alternate in-app payment options, says Dutch regulator, Mitchell Clark, The Verge, 24/12/2021, www.theverge.com/2021/12/24/22852966/apple-netherlands-dating-apps-match-tinder-app-store-competition

¹²⁷ See note 10.

¹²⁸ Apple's third-party payment proposal isn't enough for Dutch regulators, The Verge, 03/05/2022, <https://www.theverge.com/2022/5/2/23053935/apple-app-store-acm-proposal-rejected-further-fines-dating-apps>

		<p>report concluding that Apple’s <i>App Store</i> and Google’s <i>Google Play</i> have significant market power in the distribution of mobile apps in Australia. The commission also noted some measures to address Apple and Google’s app store dominance.¹²⁹</p>
France	NA	<p>The French DGCRF (General Directorate for Competition Policy, Consumer Affairs and Fraud Control) has been investigating the behavior of Google and Apple vis-à-vis app developers.¹³⁰</p> <p>On 28th March 2022, the Paris Commercial Court found that Google did not provide the court with any real justification for the 30% commission charged, as Google does not bear any financial risk related to the development of applications.</p> <p>It noted that significant imbalance may result from a mismatch of price to the service, and that the commission rate charged characterizes an asymmetry between the parties that Google cannot justify. It also noted that developers have no leeway in negotiating the commission rate.</p> <p>The court found that <i>Google Play</i>’s clauses requiring application developers to set the prices of their applications within a price range defined by Google and requiring them to let Google receive a 30% commission on each sale, were in violation of France’s Commercial Code. It gave Google time of three months from the judgment to modify these clauses.</p>
Italy	NA	<p>Italy’s Competition and Market Authority (ACGM) found that Apple and Google violated the Consumer Code – one for information deficiencies and another for aggressive practices regarding the acquisition and use of consumer data.¹³¹</p> <p>The ACGM took the view that Apple’s approach denied users the ability to properly exercise choice over commercial use of their</p>

¹²⁹ Dominance of Apple and Google’s app stores impacting competition and consumers, Australian Competition & Consumer Commission, 28/04/2021, <https://www.accc.gov.au/media-release/dominance-of-apple-and-googles-app-stores-impacting-competition-and-consumers>

¹³⁰ See note 11.

¹³¹ PS11147-PS11150 - ICA: \$20 million sanctions against Google and Apple for commercial use of user data, <https://en.agcm.it/en/media/press-releases/2021/11/PS11147-PS11150>

		<p>data, and that their data acquisition practices “condition” the user to accept its terms.</p> <p>Similarly, it said that Google pre-sets user acceptance of commercial processing of data, and does not provide users with a clear method to revoke consent for these data transfers or otherwise change their choice after account creation. It said that Google was omitting information that it must have been providing users, for them to decide whether or not to consent to its use of their data for commercial ends.</p>
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